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COMMISSION ON HUMAN RIGHTS
Sub-Commission on Prevention of
Discrimination and Protection
of Minorities
Forty-ninth session
Agenda item 4

THE REALIZATION OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Mr. Ali Khan, Ms. Attah, Ms. Daes, Mr. Eide, Ms. Ferero Ucros, Mr. Fix Zamudio, Mr. Hatano, Mr. Maxim, Ms. Palley, Mr. Park, Ms. Warzazi, Mr. Weissbrodt and Mr. Yimer: draft resolution

1997/... Forced evictions

The Sub-Commission on Prevention of Discrimination and Protection of Minorities,

Recalling its resolutions 1991/12 of 26 August 1991, 1992/14 of 27 August 1992, 1993/41 of 26 August 1993, 1994/39 of 26 August 1994, 1995/29 of 24 August 1995 and 1996/27 of 29 August 1996,

Recalling also Commission on Human Rights resolution 1993/77 of 10 March 1993 and the analytical report on forced evictions prepared by the Secretary-General (E/CN.4/1994/20) and submitted to the Commission at its fiftieth session,

Reaffirming that every woman, man and child has the right to a secure place to live in peace and dignity, which includes the right not to be evicted arbitrarily or on a discriminatory basis from one's home, land or community,

Recognizing that the practice of forced eviction often involves the coerced and involuntary removal of persons, families and groups from their homes, lands and communities, resulting in greater homelessness and inadequate housing and living conditions,

Noting that when, under exceptional circumstances, evictions are considered to be justified, such evictions must be carried out in strict compliance with relevant human rights provisions which demand, inter alia, that such evictions must not be carried out on a discriminatory or arbitrary basis, that evictions must be carried out through legal procedures that ensure appropriate due process protections and that, owing to the universal right to housing which is enshrined, most notably, in article 11 of the International Covenant on Economic, Social and Cultural Rights, such evictions must not result in individuals being rendered homeless or vulnerable to other human rights violations,

Emphasizing that ultimate legal and political responsibility for preventing forced evictions rests with Governments,

Recalling that General Comment No. 2 (1990) on international technical assistance measures, adopted by the Committee on Economic, Social and Cultural Rights at its fourth session, states, inter alia, that international agencies should scrupulously avoid involvement in projects which involve, among other things, large-scale evictions or displacement of persons without the provision of all appropriate protection and compensation (E/1990/23, annex III, para. 6), and General Comment No. 4 (1991) in which the Committee considered that instances of forced eviction were, prima facie, incompatible with the requirements of the International Covenant on Economic, Social and Cultural Rights and could only be justified in the most exceptional circumstances, and in accordance with relevant principles of international law (E/1992/23, annex III, para. 18),

Noting with appreciation the adoption of General Comment No. 7 (1997) on forced evictions by the Committee on Economic, Social and Cultural Rights (E/C.12/1997/4), in which the Committee recognized, inter alia, that women, children, youth, older persons, indigenous people, ethnic and other minorities, and other vulnerable groups all suffer disproportionately from the practice of forced eviction, and that women in all groups are especially vulnerable, given the extent of statutory and other forms of discrimination which often apply in relation to the property rights of women, including home ownership and rights of access to property or accommodation, and given the particular vulnerability of women to acts of violence and sexual abuse when they are rendered homeless,

Noting also the provisions on forced evictions contained in the Habitat Agenda (A/CONF.165/14, annex II) adopted by the United Nations Conference on Human Settlements (Habitat II) convened in Istanbul in June 1996,

1. Reaffirms that forced evictions may often constitute gross violations of a broad range of human rights, in particular the right to adequate housing, the right to remain, the right to freedom of movement, the right to privacy, the right to property, the right to an adequate standard of living, the right to security of the home, the right to security of the person, the right to security of tenure and the right to equality of treatment;

2. Strongly urges Governments to undertake immediately measures, at all levels, aimed at eliminating the practice of forced eviction, by, inter alia, ensuring the right to security of tenure for all residents;

3. Also strongly urges Governments to confer legal security of tenure on all persons, including all women and men who are currently threatened with forced eviction, and to adopt all necessary measures giving full protection against unreasonable eviction, based upon effective participation, consultation and negotiation with affected persons or groups;

4. Recommends that all Governments provide immediate restitution, compensation and/or appropriate and sufficient alternative accommodation or land, consistent with their rights and needs, to persons and communities that have been forcibly evicted, following mutually satisfactory negotiations with the affected persons or groups, and recognizing the obligation to ensure such provision in the event of any forced eviction;

5. Invites all international financial, trade, development and other related institutions and agencies, including member or donor States that have voting rights within such bodies, to take fully into account the views contained in the present resolution and other related pronouncements under international human rights and humanitarian law on the practice of forced eviction;

6. Requests the High Commissioner for Human Rights to give due attention to the practice of forced eviction in discharging her responsibilities and to undertake measures, whenever possible, to persuade Governments to comply with relevant international standards, to prevent planned forced evictions from taking place, and to ensure the provision of adequate compensation when forced evictions have already occurred;

7. Welcomes the report of the expert seminar on the practice of forced evictions, which was convened by the Secretary-General in Geneva from 11 to 13 June 1997 (E/CN.4/Sub.2/1997/7) and the comprehensive human rights guidelines on development-based displacement adopted by the expert seminar and annexed to its report;

8. Requests the Commission on Human Rights to invite all States to consider the comprehensive human rights guidelines on development-based displacement with a view to their approving guidelines for such displacement as soon as possible;

9. Decides to consider the issue of forced evictions at its fiftieth session under the agenda item entitled "The realization of economic, social and cultural rights", insofar as necessary to achieve the objectives outlined in paragraph 8 above, and to determine how most effectively to continue its consideration of the issue of forced evictions.

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Agenda item 2

QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, INCLUDING POLICIES OF RACIAL DISCRIMINATION AND SEGREGATION AND OF APARTHEID, IN ALL COUNTRIES, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES: REPORT OF THE SUB-COMMISSION UNDER COMMISSION ON HUMAN RIGHTS RESOLUTION 8 (XXIII)

Mr. Bossuyt, Ms. Daes, Mr. Diaz-Uribe, Mr. Eide, Mr. Fix Zamudio, Mr. Joinet and Mr. Weissbrodt: draft resolution

1997/... Situation of Human Rights in the Democratic People's Republic of Korea

The Sub-Commission on Prevention of Discrimination and Protection of Minorities,

Guided by the principles enshrined in the Charter of the United Nations, the Universal Declaration of Human Rights, particularly its article 13, and the International Covenant on Civil and Political Rights, particularly its article 12, to which the Democratic People's Republic of Korea is a party,

Noting, in the light of resolution 1997/22 of the Commission on Human Rights, that the Democratic People's Republic of Korea is not included in the list of countries under consideration by the Commission under public procedures (E/CN.4/Sub.2/1997/33, annex),

Concerned by persistent and concordant allegations that grave violations of human rights are being committed in that country, including recourse to mass internments in administrative detention centres, and by serious restrictions affecting, in violation of article 13 of the Universal Declaration of Human Rights and of article 12 of the International Covenant on Civil and Political Rights, the right of everyone to leave any country, including his own, and to return to his country.

Deeply concerned by the virtual impossibility of obtaining information or visiting that country to ascertain whether or not there are grounds for the allegations concerning the situation of human rights in that country, and to obtain information concerning the legislation in force and the manner in which it is implemented,

Deploring, in this connection, the delay by the Democratic People's Republic of Korea in submitting its first periodic report, due now for almost 10 years,

1. Urgently calls on the Government of the Democratic People's Republic of Korea to ensure full respect for article 13 of the Universal Declaration of Human Rights and article 12 of the International Covenant on Civil and Political Rights, both of which relate to the right of everyone to leave any country, including his own and to return to his country;

2. Requests the Government of the Democratic People's Republic of Korea to fulfil its obligations and delay no longer the submission of its first periodic report to the Human Rights Committee and to extend its cooperation with the procedures and services established by the United Nations with the aim of ensuring promotion and protection of human rights;

3. Invites the international community to devote greater attention to the situation of human rights in the Democratic People's Republic of Korea and thus assist the population of that country in emerging from the isolation in which it is maintained;

4. Also invites the international community to furnish increased assistance to the Democratic People's Republic of Korea in order to help it to overcome the present period of food shortage and the suffering it is causing.

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Agenda item 6

CONTEMPORARY FORMS OF SLAVERY

Mr. Hatano, Mr. Park and Mr. Weissbrodt: draft decision

1997/... Systematic rape and sexual slavery and slavery-like practices during periods of armed conflict

The Sub-Commission on Prevention of Discrimination and Protection of Minorities, recalling Commission on Human Rights resolution 1996/25 of 19 April 1996, in which the Commission referred to the fact that both experts and alternates could undertake studies for the Sub-Commission; taking note of the letter dated 13 May 1997 from Ms. Linda Chavez, Special Rapporteur on the situation of systematic rape, sexual slavery and slavery-like practices during periods of armed conflict, in which the Special Rapporteur informed the High Commissioner and the Centre for Human Rights of her resignation as Special Rapporteur and of her inability to submit her final report, as requested by the Sub-Commission in its resolution 1996/11 of 23 August 1996; noting that Ms. Chavez has expressed the hope that her study will nonetheless be completed; and recalling its decision 1996/113 of 29 August 1996, in which it recognized the need to bring to a successful conclusion studies which have been initiated, decides to entrust Ms. Gay J. McDougall with the task of completing the study on the situation of systematic rape, sexual slavery and slavery-like practices during periods of armed conflict for submission to the Sub-Commission at its fiftieth session.

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Agenda item 5 (a)

THE IMPLEMENTATION OF THE HUMAN RIGHTS OF WOMEN: TRADITIONAL PRACTICES AFFECTING THE RIGHTS OF WOMEN AND OF THE GIRL CHILD

Mr. Alfonso Martínez, Mr. Ali Khan, Mr. Bossuyt, Mrs. Daes, Mr. Eide, Mrs. Forero Ucros, Mrs. Gwanmesia, Mr. Hatano, Mr. Joinet, Mr. Khalifa, Mr. Maxim, Mrs. Mbonu, Mr. Mehedi, Mrs. Palley, Mr. Weissbrodt and Mr. Yimer: draft resolution

1997/... Traditional practices affecting the health of women and the girl child

The Sub-Commission on Prevention of Discrimination and Protection of Minorities,

Recalling its resolution 1996/19 of 19 August 1996,

Considering that female genital mutilation is a cultural practice which profoundly affects the physical health and mental health of the girl child and of women who are its victims,

Recalling that the Universal Declaration of Human Rights, in its article 5, and the International Covenant on Civil and Political Rights, in its article 7, proclaim that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment,

Bearing in mind General Assembly resolution 843 (IX) of 17 December 1954 which, considering that certain customs, ancient laws and practices relating to marriage and the family are inconsistent with the principles enunciated in the United Nations Charter and in the Universal Declaration of Human Rights, urged all States to take all appropriate measures with a view to abolishing them,

Recalling the obligations undertaken by all States which have ratified the international human rights covenants, the Convention on the Elimination of All Forms of Discrimination Against Women and the Convention on the Rights of the Child,

1. Takes note with satisfaction of the report submitted by the Special Rapporteur, Mrs. Halima Embarek Warzazi (E/CN.4/Sub.2/1997/10 and Add.1);

2. Draws attention to article 5 of the Convention on the Elimination of All Forms of Discrimination Against Women which provides that States parties shall take all appropriate measures to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes;

3. Recalls that article 24 of the Convention on the Rights of the Child expressly calls on States parties to take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children;

4. Fully supports the Vienna Declaration and Programme of Action adopted by the World Conference on Human Rights in June 1993, which proclaims that gender-based violations, including those resulting from cultural prejudice, are incompatible with the dignity and worth of the human person and must be eliminated;

5. Appeals urgently to States to implement the Plan of Action on the elimination of traditional practices affecting the health of women and children (E/CN.4/Sub.2/1994/10/Add.1 and Corr.1);

6. Takes note with satisfaction of the progress achieved by certain Governments in their struggle against harmful traditional practices and, in particular, against female genital mutilation;

7. Regrets, however, the small number of answers received, in particular from the Governments concerned, on the implementation of the Plan of Action;

8. Expresses its concern at the recent obstacles encountered by the campaign against female genital mutilation in certain countries;

9. Lends its support to the Governments and to the non-governmental organizations of the countries concerned and of all countries facing a similar situation in order that they may continue to work towards the total elimination of this cultural practice;

10. Appeals to all States concerned to intensify efforts to develop awareness of and to mobilize national public opinion concerning the harmful effects of the practice, in particular through education, information and training, in order to achieve the total elimination of female genital mutilation;

11. Also appeals to the international community to provide its material, technical and financial support to the non-governmental organizations and to the groups that are working with dedication to achieve the total elimination of this cultural practice that is harmful for girl children and women;

12. Commends the intergovernmental organizations concerned for the important contribution they are making to the efforts to eliminate harmful traditional practices and invites them to continue their activities aimed at supporting and strengthening the efforts being made by national and local organizations engaged in this struggle;

13. Requests the Special Rapporteur to submit to the Sub-Commission, at its next session, her follow-up report on the situation regarding the elimination of traditional practices affecting the health of women and children, in the framework of the Plan of Action.

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QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, INCLUDING POLICIES OF RACIAL DISCRIMINATION AND SEGREGATION AND OF APARTHEID, IN ALL COUNTRIES, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES: REPORT OF THE SUB-COMMISSION UNDER COMMISSION ON HUMAN RIGHTS RESOLUTION 8 (XXIII)

Mr. Alfonso Martínez, Mr. Ali Khan, Mr. El-Hajjé,
Mr. Khalil and Mr. Mehedi: draft resolution

1997/... Situation in the Palestinian and other Arab territories occupied by Israel

The Sub-Commission on Prevention of Discrimination and Protection of Minorities,

Guided by the purposes and principles of the Charter of the United Nations, the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, in particular the principles of equal rights and self-determination of all peoples,

Mindful of the principles and humanitarian provisions of the Geneva Conventions of 12 August 1949 for the protection of war victims, of the

principles and provisions of international law, and of the obligations arising from the Regulations concerning the Laws and Customs of War on Lands, annexed to the Hague Convention IV of 1907,

Affirming the distinction between terrorism and the legitimate right of peoples to resist foreign occupation,

Reaffirming the applicability of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, on the Palestinian and other Arab territories occupied by Israel since 1967,

Deeply alarmed at the non-respect by Israel of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, and the failure to apply it to the Palestinians in the occupied Palestinian territory and to civilian persons in other occupied Arab territories,

Deeply concerned also at the decisions of the Israeli High Court of Justice of 11 January 1996 and 17 November 1996, legalizing the torture of Palestinians,

Deeply alarmed at the recent and most serious violations of human rights in the Palestinian and other occupied territories, and in particular the continued building of Israeli settlements in the occupied Palestinian territories, including Jerusalem, and the occupied Syrian Golan, and the continued detention of over four thousand Palestinians in Israeli prisons without trial,

Deeply concerned at the serious obstacles that such violations create for the peace process in the Middle East, as well as at Israel's reneging of the basis and principles of the Madrid Peace Conference,

Deeply concerned also at the most recent Israeli measures against the Palestinian people in the territories of the Palestinian authority and others, which constitute violations of human rights and of the agreements signed by the Government of Israel and the Palestine Liberation Organization,

1. Reaffirms that the recent human rights violations, in particular the persistence of Israel in maintaining and expanding its settlements and establishing new ones, are contrary to and endanger the peace process;

2. Condemns terrorism in all its forms and manifestations, including State terrorism;

3. Calls upon the Government of Israel to stop immediately all the measures taken against the Palestinian people and the Palestinian Authority;

4. Also calls upon the Government of Israel, in the light of the most dangerous situation now existing in the Middle East resulting from Israel's refusal to comply with Security Council resolution 497 (1981) and all resolutions of the General Assembly and the Commission on Human Rights relative to the occupied Syrian Golan, to desist from changing the physical character, demographic composition, institutional structure and the legal status of the occupied Syrian Golan, which constitute gross violations of the human rights and fundamental freedoms of the citizens of the Syrian Arab Republic in the occupied Syrian Golan;

5. Affirms that the realization of a comprehensive and just peace in the Middle East requires the complete withdrawal of Israel from all occupied Palestinian territory, including Jerusalem, enabling the Palestinian people to exercise their rights to self-determination and to establish their independent State, the complete withdrawal of Israel from the occupied Syrian Golan and the complete and unconditional withdrawal of Israel from the south of Lebanon and West Bekaa, in conformity with Security Council resolutions 242 (1967), 338 (1973) and 425 (1978) and in accordance with the principle of land for peace;

6. Requests the Secretary-General to provide the Sub-Commission, at its fiftieth session, with an updated list of reports, studies, statistics and other documents relating to the question of Palestine and other occupied Arab territories, with the texts of the most recent relevant United Nations resolutions and decisions and the report of the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and Other Arabs of the Occupied Territories, and with all other information relevant to the implementation of the present resolution.

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Agenda item 3 (a)

COMPREHENSIVE EXAMINATION OF THEMATIC ISSUES RELATING
TO THE ELIMINATION OF RACIAL DISCRIMINATION:

SITUATION OF MIGRANT WORKERS AND MEMBERS OF THEIR FAMILIES

Mrs. Gwanmesia, Mr. Khalifa, Mr. Fix Zamudio,
Mr. Maxim, Mr. Mehedi, Mrs. Warzazi, Mr. Weissbrodt
and Mr. Yimer: draft resolution

1997/... Situation of migrant workers and members of their families

The Sub-Commission on Prevention of Discrimination and Protection of Minorities,

Recalling Commission on Human Rights resolutions 1997/13 and 1997/15, dated 3 April 1997, and its resolution 1996/10 of 23 August 1996,

Reaffirming that acts of violence against migrant workers, both men and women, constitute flagrant violations of the international instruments relating to human rights, and in particular the Convention on the Elimination of All Forms of Discrimination against Women,

Convinced that the implementation of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families will contribute to the improvement of the situation of migrant workers and to the protection of their rights,

Sharing the opinion of the Commission on Human Rights on the situation of vulnerability in which migrants frequently find themselves owing, among other things, to their absence from their State of origin and to the difficulties they encounter because of differences of languages, customs and culture,

Taking note with interest of the recommendations adopted by the seminar on immigration, racism and racial discrimination,

1. Affirms that immigration is by no means a burden but rather a phenomenon whose effects are rewarding for receiving societies in economic, social and cultural terms;

2. Considers that if the geographical dynamics of international migratory movements are steadily increasing, it is because poverty is growing in a large number of developing countries and the use of foreign labour in the developed countries is continuing despite claims that there is a crisis;

3. Regrets the contradiction which exists between the free movement of goods, the liberalization of trade in services and financial transactions encouraged by the transnational corporations and international financial institutions, and the increasingly draconian restrictions imposed on the movement of individuals;

4. Again condemns acts of violence resulting from racism, racial discrimination and xenophobia directed against migrant workers;

5. Calls on the competent authorities of receiving countries to pay particular attention to the protection of women migrant workers, who are confronted with dual discrimination as women and migrant workers;

6. Takes note with satisfaction of the positive measures taken by the European Union to give practical substance to the Year against Sex Tourism which it has proclaimed, and the measures decided by several European countries with the aim of legalizing certain situations whose precarious character seriously affects migrant workers and members of their families;

7. Appeals to the States concerned by immigration to study the possibility of granting migrant workers dual nationality which would constitute a positive factor for integration, with due respect for cultural identity, and also protection against the evils of racial discrimination;

8. Affirms that the promulgation and/or reinforcement by Governments of effective legislation against racism and racial discrimination would guarantee the protection of migrant workers and members of their families;

9. Welcomes the establishment by the Commission on Human Rights of a working group on migrants and human rights;

10. Considers that it would be useful, on the occasion of the establishment of policies aimed at protecting the rights of migrant workers, for Governments to be able to benefit from the experience of representatives of migrant workers' organizations;

11. Is convinced that an information campaign on the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families would contribute to its ratification;

12. Again appeals to all Governments to ratify the Convention in order that it may be put into effect as soon as possible;

13. Decides to continue to consider this item at its next session.

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Agenda item 4 (d)

THE REALIZATION OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS: THE REALIZATION OF THE RIGHT TO EDUCATION, INCLUDING EDUCATION IN HUMAN RIGHTS

Mr. Ali Khan, Mrs. Daes, Mr. Eide, Mr. El-Hajjé, Mrs. Forero Ucros, Mrs. Gwanmesia, Mr. Julia Motoc, Mr. Joinet, Mr. Park, Mrs. Warzazi, Mr. Weissbrodt and Mr. Yimer: draft resolution

1997/... The realization of the right to education, including education in human rights

The Sub-Commission on Prevention of Discrimination and Protection of Minorities,

Guided by the principles relating to the right to education enshrined in the International Bill of Human Rights, in particular article 26 of the Universal Declaration of Human Rights, article 28 of the Convention on the Rights of the Child and article 13 of the International Covenant on Economic, Social and Cultural Rights, which provide that everyone has the right to education,

Recalling the Vienna Declaration and Programme of Action adopted by the World Conference on Human Rights, in particular part I, paragraph 33, and part II, paragraphs 78 to 82, thereof,

Recalling the World Declaration on Education for All: Action to Meet Basic Learning Needs, adopted at Jomtien, Thailand, on 9 March 1990,

Recalling Commission on Human Rights resolution 1996/44 of 19 April 1996,

Recalling the World Plan of Action on Education for Human Rights and Democracy, adopted by the International Congress on Education for Human Rights and Democracy convened by the United Nations Educational, Scientific and Cultural Organization at Montreal, Canada, in 1993,

Bearing in mind the United Nations Decade for Human Rights Education proclaimed by the General Assembly of the United Nations in its resolution 49/184 of 23 December 1994, which is to end in the year 2004,

Noting that the question of the right to education has not previously been dealt with in the framework of the United Nations bodies responsible for the protection of human rights,

Noting with satisfaction the developing international awareness of the importance of education, particularly in the field of human rights, for human development,

Conscious of the central role played by human rights education in combating intolerance, racism and exclusion,

1. Encourages States to make all necessary efforts to ensure realization of the right to education and the promotion of human rights education at all levels of the educational system;

2. Decides to place the question of the right to education, and particularly human rights education, on the agenda of the Sub-Commission for the duration of the United Nations Decade for Human Rights education (1995-2004);

3. Requests Mr. Mustapha Mehedi to prepare, without incurring financial obligations, a working paper on the right to education, and particularly human rights education, for submission to the Sub-Commission at its fiftieth session, the purpose of the working paper being to explain the content of the right to education, taking account, in particular, of its social dimension and the freedoms it includes and of its dual civil and political rights and economic, social and cultural rights character, and to identify ways and means of promoting human rights education.

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THE REALIZATION OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Mrs. Daes, Mr. Fan, Mr. Guissé, Mrs. Gwanmesia, Mr. Hatano, Ms. Palley, Mr. Park, Ms. Warzazi, Mr. Weissbrodt and Mr. Yimer:
draft decision

1997/... The right to food

The Sub-Commission on Prevention of Discrimination and Protection of Minorities, recalling its resolution 1996/25 of 29 August 1996 in which it appealed to the World Food Summit to propose, inter alia, ways in which the right to food could be further clarified and implemented; taking into account the adoption by the World Food Summit in November 1996 of its Plan of Action, including its objective 7.4 which, inter alia, invited the United Nations High Commissioner for Human Rights, in consultation with relevant United Nations and intergovernmental mechanisms, to better define the rights related to food and to propose ways to implement and realize those rights; and noting that this request was endorsed by the Commission on Human Rights in its resolution 1997/8 of 3 April 1997, **decided to request** Mr. Asbjørn Eide to review and update, without financial implications, his study on the right to food submitted in 1987 (Human Rights Study Series No. 1, United Nations publication, Sales No. E.89.XIV.2) and to submit the updated study to the Sub-Commission at its fiftieth session in 1998.

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Agenda item 3

COMPREHENSIVE EXAMINATION OF THEMATIC ISSUES RELATING
TO THE ELIMINATION OF RACIAL DISCRIMINATION

Mr. Ali Khan, Mr. Bossuyt, Mr. Boutkevitch, Mr. Chernichenko,
Ms. Daes, Mr. Eide, Mr. El-Hajjé, Mr. Guissé, Mr. Fan, Mr. Fix,
Ms. Forero Ucros, Ms. Gwanmesia, Mr. Hatano, Mr. Joinet,
Mr. Khalil, Mr. Lindgren, Mr. Maxim, Ms. Mbonu, Ms. McDougall,
Mr. Mehedi, Mrs. Palley, Mr. Park, Ms. Warzazi and Mr. Yimer:
draft resolution

1997/... Racism and racial discrimination

The Sub-Commission on Prevention of Discrimination and Protection of Minorities,

Recalling its resolution 1996/8 of 23 August 1996, in which the Sub-Commission expressed its full support for the convening, as soon as possible, of a world conference to combat racism and racial discrimination,

Welcoming Commission on Human Rights resolution 1997/74 of 18 April 1997, in which the Commission recommended that the General Assembly convene a world conference on racism and racial discrimination, xenophobia and related intolerance not later than the year 2001 and noted the importance of taking a gender perspective into account throughout the preparation of the conference,

Welcoming also Economic and Social Council resolution 1997/38, in which the Council endorsed the call for the General Assembly to convene a world

conference on racism and related intolerance not later than the year 2001 and expressed the view that the conference itself should be action-oriented, with a focus on practical measures to eradicate racism,

Welcoming further General Assembly resolution 50/136 of 21 December 1995, in which the Assembly decided that the international community in general and the United Nations in particular should give the highest priority to programmes for combating racism and racial discrimination, and Assembly resolution 51/81 of 12 December 1996 in which the Assembly expressed its regret at the lack of interest, support and financial resources for the Third Decade to Combat Racial Discrimination and Racial Discrimination and its Programme of Action,

Expressing its gratitude to the Committee on the Elimination of Racial Discrimination for recommending future Sub-Commission studies that could usefully contribute to the work of the Committee,

Noting with grave concern the persistence of racism and the emergence of new forms of racial discrimination, xenophobia and related intolerance, including new policies based on racial, religious, ethnic, cultural and national superiority or exclusivity,

Alarmed, moreover, at the increasingly violent forms of racism and racial discrimination in different parts of the world which constitute a grave threat to the building of a social order where all human rights can be realized,

Recognizing, in particular, that the 400-year tragedy of plantation slavery in the Americas continues to be felt throughout the hemisphere, and that African diaspora communities in the Americas continue to suffer from the legal, political and economic legacies of the slave trade, so that today Black communities in the Americas are among the poorest of the poor and poverty is an immutable fact of life for the majority of peoples of African descent living in the Americas,

Conscious that there exists a connection between the growing problem of racism and racial discrimination and global social and economic developments, including the widening gap between rich and poor within and between countries,

Deeply concerned that the Programme of Action for the Third Decade to Combat Racism and Racial Discrimination has remained largely unimplemented,

Convinced that the increasing danger of racism and racial discrimination must be met by a concerted response by the international community

commensurate with the threat posed to the realization of the objective of the Charter of the United Nations to promote universal respect for, and observance of, human rights and fundamental freedoms for all,

Recalling the two World Conferences to Combat Racism and Racial Discrimination, held at Geneva in 1978 and 1983,

Convinced that the convening of a third world conference to combat racism and racial discrimination in the near future would send a clear signal of the determination of the world community to deal decisively with the scourge of racism and would be an important opportunity for developing comprehensive, action-oriented strategies to combat racism and racial discrimination,

1. Encourages States that have not yet ratified the International Convention on the Elimination of All Forms of Racial Discrimination to do so, with a view to eradicating all forms of racial discrimination within their territories and appeals to States parties to the Convention to submit their reports to the Committee on the Elimination of Racial Discrimination in a timely manner;

2. Calls upon Member States to contribute generously to the Trust Fund for the Programme for the Decade for Action to Combat Racism and Racial Discrimination;

3. Requests the Secretary-General to take every measure, including those approved by the General Assembly in its resolutions 48/91 of 20 December 1993 and 49/146 of 23 December 1994 and in the programme budget relating to the activities of the Third Decade, to ensure the implementation of the recommendation by the General Assembly to establish a focal point on racism within the Centre for Human Rights for the coordination of activities under the Third Decade;

4. Calls upon the Working Group on Minorities to consider how the Sub-Commission in its future work might usefully address the continuing legal, political and economic legacies of the African slave trade, as experienced by Black communities throughout the Americas;

5. Expresses its full support for the convening of a world conference to combat racism and racial discrimination not later than the year 2001, as recommended by the Commission on Human Rights in its resolution 1997/74 and the Economic and Social Council in its resolution 1997/38;

6. Calls upon Member States to respond positively to the proposal to convene a world conference to combat racism and racial discrimination;

7. Confirms its readiness to contribute actively at every stage of the preparations for a world conference to combat racism and racial discrimination;

8. Requests the United Nations High Commissioner for Human Rights to submit to the Commission on Human Rights a report on the status of preparations for the world conference to combat racism and racial discrimination and the ways and means in which the Sub-Commission and other relevant bodies can contribute to the tasks the Commission proposed be entrusted to it as the preparatory committee for the world conference to combat racism and racial discrimination;

9. Expresses its belief that the world conference to combat racism and racial discrimination should carefully consider the complicated interplay of discrimination based on race and discrimination based on other grounds, such as gender;

10. Proposes to hold in 1998, jointly with the Committee on the Elimination of Racial Discrimination, without financial implications, an expert seminar that will explore in depth, inter alia, the issues put forward by the Committee on the Elimination of Racial Discrimination for further study by the Sub-Commission (see E/CN.4/Sub.2/1997/31), and determines, in addition, to continue to explore other opportunities to collaborate with and support the work of the Committee on the Elimination of Racial Discrimination;

11. Resolves that the Sub-Commission should strive in all of its work to include disaggregated data on the extent to which direct or indirect discrimination and violations of economic, social or cultural rights may be linked to racial, ethic or gender distinctions;

12. Invites all organizations and bodies of the United Nations, and particularly the special procedures of the Commission on Human Rights, to the extent appropriate within their mandates, to include an assessment of race and ethnicity factors in the conduct of their respective programmes of work, including all reporting under international human rights instruments and mechanisms;

13. Notes the work of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance and calls

upon both Member States and the Secretary-General to provide the Special Rapporteur, without delay, with all necessary assistance and resources to enable him to carry out his full mandate;

14. Takes note with satisfaction of the recommendations adopted by the Seminar on Immigration, Racism and Racial Discrimination organized by the High Commissioner/Centre for Human Rights from 5 to 9 May 1997, requests that the recommendations be widely distributed, and expresses the hope that the Commission's working group of intergovernmental experts on the protection of the human rights of migrants will take the conclusions and recommendations of the Seminar into consideration during its deliberations;

15. Decides to give full attention to these issues at its fiftieth session under the same agenda item.

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Sub-Commission on Prevention of
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of Minorities
Forty-ninth session
Agenda item 2

QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, INCLUDING POLICIES OF RACIAL DISCRIMINATION AND SEGREGATION AND OF APARTHEID, IN ALL COUNTRIES, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES: REPORT OF THE SUB-COMMISSION UNDER COMMISSION ON HUMAN RIGHTS RESOLUTION 8 (XXIII)

Mrs. Palley: draft resolution

1997/... Situation of human rights in India

The Sub-Commission on Prevention of Discrimination and Protection of Minorities,

Recognizing the enormous responsibility of the United Kingdom of Great Britain and Northern Ireland for having left in the Indian sub-continent traditions of:

(i) Imperialism towards peoples and their territories;

(ii) Harsh military suppression of dissent combined with sweeping special emergency powers;

(iii) Reactionary penal laws;

(iv) Double standards of enunciating human rights and the rule of law which were formally rather than practically applied in her colonial possessions and protectorates;

(v) Unwillingness and a degree of inability to undertake real reform in the Indian sub-continent of social, cultural, economic or other institutions; and

(vi) Unrestrained capitalist and caste exploitation of labour and natural and other resources,

Recognizing also that India, after 50 years of independence, has maintained much from these traditions and has done little to correct the economic, social and cultural ills and human rights violations taking place throughout the State,

Recognizing, however that the Constitution of India contains a detailed Bill of Rights and Directive Principles of State Policy protective of human rights; that a National Commission on Minorities and a National Commission on Human Rights, together with some state human rights commissions, exist; and that there is extensive constitutional and legislative protection for Scheduled Castes and Scheduled Tribes,

1. Observes, in this fiftieth anniversary year of the independence of India, the world's second most populous State and its largest democracy, that:

(i) The Human Rights Committee, after consideration of the third periodic report of India, in its concluding observations (CCPR/C/79/Add.81, para. 23) expressed its concern at allegations that the police and other security forces do not always respect the rule of law and that in particular court orders for habeas corpus are not always complied with, particularly in disturbed areas;

(ii) The Human Rights Committee also expressed concern about the incidence of custodial deaths, rape and torture (ibid., para. 23);

(iii) The Special Rapporteur of the Commission on Human Rights on the question of torture had received information indicating that torture was practised routinely by the army, the Border Security Force and the Central Reserve Police Forces against the vast majority of persons arrested for political reasons in Jammu and Kashmir (E/CN.4/1996/35, 9 January 1996, para. 70);

(iv) The Special Rapporteur on the question of torture continued to receive information in 1996 indicating that the security forces in Jammu and Kashmir had tortured detainees systematically and that the torture was said to be facilitated by the practice of holding

detainees in temporary detention centres without access to courts, relations or medical care, while some reported torture included severe beatings, electric shocks, crushing the leg muscles with a wooden roller, burning with heated objects and rape (E/CN.4/1997/7, 10 January 1997, para. 87);

(v) The Special Rapporteur on the question of torture reported claims that detainees were rarely produced before a magistrate, despite a law requiring this to be done within 24 hours, and that since 1990 over 15,000 habeas corpus petitions had been filed but that in the vast majority of cases the authorities had not responded to the petitions (ibid., para. 88);

(vi) The Special Rapporteur on the question of torture remained concerned at the persistence of allegations of torture, followed often by death in custody (ibid., para. 90);

(vii) The Special Rapporteur on the question of torture reported claims that on no occasion had information been made public regarding instances of action taken against security force personnel in Jammu and Kashmir for acts of torture (ibid., para. 88);

(viii) The Working Group on Enforced or Involuntary Disappearances was notified by the Government of India that allegations of violations of human rights by the security forces in Jammu and Kashmir were immediately investigated, and that so far some 272 personnel had been punished (E/CN.4/1997/34, 13 December 1996, para. 183);

(ix) The total number of personnel punished has scarcely increased over the total given two years earlier to the Sub-Commission and this despite the presence of several hundred thousand active army personnel in Jammu and Kashmir;

(x) The Working Group on Enforced or Involuntary Disappearances also noted that the Supreme Court in Punjab had received a writ petition alleging the secret cremation by the Punjab police of hundreds of bodies, leading to investigation by the Central Bureau of Investigation (ibid., para. 184);

(xi) There is reliable information that 2,500 bodies, mainly of young men, were secretly cremated and that the lawyer who initiated the petition was arrested and has disappeared;

(xii) The Special Rapporteur on extrajudicial, summary or arbitrary executions has received numerous reports of violations of the right to life in India and allegations concerning deaths inflicted in custody resulting from torture and ill-treatment inflicted by police personnel during the preliminary stages of detention when access to outsiders is routinely denied, and that the alleged perpetrators in the police and armed forces enjoy virtual impunity, such violations in large number being claimed to be committed in Jammu and Kashmir, Punjab and Uttar Pradesh (E/CN.4/1996/4, para. 231);

(xiii) The Special Rapporteur on extrajudicial, summary or arbitrary executions remained deeply concerned at the reported failure of the Government to prosecute members of security forces involved in human rights violations (ibid., para. 238);

(xiv) The Special Rapporteur on extrajudicial, summary or arbitrary executions has made repeated efforts since 1993 to be invited to visit India (E/CN.4/1996/4, 25 January 1996, para. 241 and E/CN.4/1997/60, 24 December 1996, para. 22) but no invitation has materialized;

(xv) The Special Rapporteur on the question of torture has likewise made repeated requests to visit India (E/CN.4/1996/35, 9 January 1996, para. 77 and E/CN.4/1997/7, 10 January 1997, para. 90) and regrets the reluctance of the Government of India to invite him to the country, as does the Human Rights Committee (CCPR/C/79/Add.81, para. 23);

(xvi) The National Commission on Human Rights, while doing excellent investigating and recommendatory work within the scope of its mandate under the Protection of Human Rights Act, is prevented by Clause 19 from investigating directly complaints of human rights violations against the armed forces, having to request a report from the Government, while complaints to the Commission are subject to a one-year time-limit, thus preventing the investigation of many alleged past human rights violations (ibid., para. 22 and CERD/C/304/Add.13, 17 September 1996, para. 16);

(xvii) Although the Terrorist and Disruptive Activities (Prevention) Act (TADA) has lapsed, about 1,600 persons detained thereunder are

still in detention under its provisions (CCPR/C/79/Add.81, para. 25), while the National Security Act and, in some areas of India, the Public Safety Act remain in force, a fact regretted by the Committee on the Elimination of Racial Discrimination (CERD/C/304/Add.13, para. 21), while the Armed Forces (Special Powers) Act has been applied to areas declared as disturbed for many years, as for example throughout Manipur since 1980 and in other areas of the State much longer, this meaning that the Government of India has in effect been using emergency powers without resorting to article 4.3 of the International Covenant on Civil and Political Rights (CCPR/C/79/Add.81, para. 19);

(xviii) The Human Rights Committee has reported that the use of special powers of detention remains widespread and has expressed concern at legislative proposals to reintroduce parts of TADA, leading to further violations of the International Covenant on Civil and Political Rights, which is now not complied with in respect of the duty promptly to inform the person concerned of the reasons for his or her arrest and in respect of the need for due proceedings to decide to continue detention (ibid., paras. 24 and 25);

(xix) The Human Rights Committee has recommended that continued detention be determined by an impartial tribunal and that at very least there be a central register of detainees and that the International Committee of the Red Cross be admitted to all types of facilities, particularly in areas of conflict (ibid., para. 24);

(xx) Even civil proceedings (as well as criminal proceedings) may not be commenced against members of the security and armed forces acting under Special Powers without the permission of the central Government, and the Human Rights Committee has expressed its concern over this matter, noting that it contributes to a climate of impunity (ibid., para. 21);

(xxi) The Committee on the Elimination of Racial Discrimination has expressed great concern that the Government of India claims that the situation of the Scheduled Castes and Scheduled Tribes does not fall within the scope of the International Convention on the

Elimination of All Forms of Racial Discrimination (CERD/C/304/Add.13, 17 September 1996, paras. 2 and 14);

(xxii) The Committee on the Elimination of Racial Discrimination has also expressed serious concern that Kashmiris, as well as other groups, are frequently treated, on account of their ethnic or national origin, in ways contrary to the basic provisions of the Convention (ibid., para. 15);

(xxiii) The Committee on the Elimination of Racial Discrimination has pointed out that, although constitutional provisions and legal texts exist to abolish untouchability and to protect the members of the Scheduled Castes and Scheduled Tribes, and although social and educational policies have been adopted to improve their situation and to protect them from abuses, widespread discrimination and the relative impunity of those who abuse them, such measures have limited effect, and the Committee is particularly concerned at reports that people belonging to the Scheduled Castes and Scheduled Tribes are often prevented from using public wells or from entering cafes or restaurants and that their children are sometimes separated from other children in schools in violation of article 5 (f) of the Convention (CERD/C/304/Add.13, para. 23);

(xxiv) The Human Rights Committee has also expressed its concern that, despite measures taken by the Government, members of Scheduled Castes and Scheduled Tribes, as well as the so-called backward classes and ethnic national minorities, continue to endure severe social discrimination and to suffer disproportionately from many violations of their rights under the Covenant including inter-caste violence, bonded labour and discrimination of all kinds (CCPR/C/79/Add.81, para. 15);

(xxv) The Human Rights Committee has further expressed grave concern that legislative measures to outlaw child marriages, dowry-related violence, suttee, foeticide and infanticide of females are not sufficient and that measures designed to change the attitude allowing such practices are necessary in order to protect women from all discriminatory practices including violence (ibid., para. 16);

(xxvi) The Human Rights Committee likewise expressed concern that women in India have not been accorded equality in the enjoyment of their rights and freedoms in conformity with articles 2 and 26 of the Covenant (ibid., para. 17);

(xxvii) The Human Rights Committee also expressed concern at the extent of bonded labour, as well as the fact that the incidence of this practice reported to the Supreme Court of India is far higher than was mentioned by the Government of India in its third periodic report to the Committee, and noted its concern that eradicative measures taken do not appear to be effective in achieving real progress in the release or rehabilitation of bonded labourers (ibid., para. 29);

(xxviii) The Human Rights Committee deplored the high incidence of child prostitution or trafficking of women and girls into forced prostitution, regretting the lack of effective measures to prevent such practices and to protect victims, as well as deploring the lack of effective measures to stop the practice of Devadasi (dedication of small girls as temple prostitutes);

(xxix) The Human Rights Committee further expressed concern that there had been little progress in implementing the Child Labour (Prohibition) Act 1986 and recommended that urgent steps be taken to remove all children from hazardous occupations, together with immediate steps to implement the recommendations of the National Human Rights Commission to respect the constitutional requirement that it is a fundamental right for all children under 14 to have free and compulsory education;

2. Warmly welcomes the renewed talks between India and Pakistan under the Simla Agreements, believing that only peaceful negotiations, involving also full participation by the people of Jammu and Kashmir, can end the gross and systematic violations of human rights which have occurred and are still occurring, and also terrorism;

3. Urges the Government of India:

(i) To ratify the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;

(ii) To ratify the Optional Protocol to the International Covenant on Civil and Political Rights and to reconsider its extensive

reservations to the Covenant referred to by the Human Rights Committee (CCPR/C/79/Add.81, para. 14);

(iii) To invite the Special Rapporteur on the question of torture to visit India within the current year;

(iv) To invite the Special Rapporteur on extrajudicial, summary or arbitrary executions to visit India within the current year or soon thereafter;

(v) To give expedited consideration to the report of the Human Rights Committee and all its many recommendations;

(vi) To give similar consideration to the concluding observations of the Committee on the Elimination of Racial Discrimination made as long ago as 17 September 1996;

(vii) In particular, to consider strengthening the powers of the National Human Rights Commission to investigate and initiate legal proceedings in respect of any violations of human rights by whomsoever they may be committed;

(viii) To end the virtual impunity of the vast numbers of police and armed and paramilitary forces employed by the State to counter terrorism and crime;

4. Calls upon the Government of India:

(i) To ensure that its police and security forces do not use excessive or arbitrary force to counteract terrorist actions;

(ii) To act in accordance with the restrictions on the use of force and firearms set out in applicable international instruments;

(iii) To take legislative and administrative steps necessary to ensure that all cases of alleged deaths in custody, or in the course of "encounters", and all allegations of torture, inhuman treatment and rape are promptly investigated and that criminal prosecutions in accordance with due process of law and international standards are brought against any alleged perpetrators;

(iv) To ensure that its army, other security forces and police are warned: that rape is an offence destructive of life, especially in locations and cultures where women and girl victims are forever stigmatized and irremediably damaged psychologically; that exemplary criminal punishment will be imposed on any assailant; and that officers whose men are repeatedly alleged to have been

involved in such conduct will face severe disciplinary sanctions for failing to maintain honour and order among Indian forces;

(v) To abolish the use of and any forms of restraint which are inhuman or degrading or capable of inflicting torture on the person of the detainee or prisoner;

5. Decides to recommend that the Commission on Human Rights consider the situation in India at its next session.

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QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, INCLUDING POLICIES OF RACIAL DISCRIMINATION AND SEGREGATION AND OF APARTHEID, IN ALL COUNTRIES, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES: REPORT OF THE SUB-COMMISSION UNDER COMMISSION ON HUMAN RIGHTS RESOLUTION 8 (XXIII)

Ms. Palley: draft resolution

Draft resolution on the Situation of Human Rights in Pakistan

The Sub-Commission on Prevention of Discrimination and Protection of Minorities,

Recognizing the enormous responsibility of the United Kingdom of Great Britain and Northern Ireland for having left in the Indian subcontinent traditions of:

(i) Imperialism toward peoples and their territories;

(ii) Harsh military suppression of dissent combined with sweeping special emergency powers;

(iii) Reactionary penal laws;

(iv) Double standards of enunciating human rights and the rule of law, which were formally rather than practically applied in her colonial possessions and protectorates;

(v) Unwillingness and a degree of inability to undertake real reform in the Indian sub-continent of social, cultural, economic or other institutions or of traditional practices and customs depriving women and girls of their rights; and

(vi) Unrestrained capitalist and feudalist exploitation of labour and natural and other resources,

Recognizing also that Pakistan, after 50 years of independence, has maintained much from these traditions and has done little to correct the economic, social and cultural ills and human rights violations taking place throughout that State,

1. Observes, in this fiftieth anniversary year of the independence of Pakistan, the world's fifth most populous State:

(i) That the Commission on Human Rights, in its resolution 1997/38 urged all States to become parties to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment as a matter of priority; recalled that freedom from torture is a non-derogable right; called upon all Governments to implement fully the prohibition of torture and other cruel, inhuman or degrading treatment or punishment; and stressed that those who encourage, order, tolerate or perpetrate such acts must be severely punished;

(ii) That the Special Rapporteur on the question of torture in his annual reports over a number of years has reported to the Commission on Human Rights on allegations indicating that torture of persons in the custody of the police and the paramilitary and the armed forces is endemic, widespread and systematic in Pakistan, and that the majority of women held in police custody are subjected to some form of sexual abuse, including rape;

(iii) That the Special Rapporteur on the question of Torture visited Pakistan in February and March 1996 and reported that torture, including rape, and similar cruel, inhuman or degrading treatment are rife in Pakistan (E/CN.4/1997/7/Add.2, para. 96) and that this state of affairs is perpetuated by the virtual impunity from criminal sanction of the perpetrators of these grave crimes (paras. 84-98);

(iv) That the Special Rapporteur on the question of torture discovered that, contrary to assurances given him by the Government of Pakistan, bar fetters were in use in prisons (E/CN.4/1997/7/Add.2, paras. 50-62);

(v) That the Abolition of the Punishment of Whipping Act 1996, precluding courts (not prisons) from awarding a sentence of whipping "except in cases where the punishment of whipping is provided as Hadd", permits continuation of the prescribed punishment of 100 lashes in the case of illicit sexual relations, and death by stoning, in the case of adultery;

(vi) That the Special Rapporteur on the question of torture reported that detainees were kept in unauthorized detention centres by the Federal Intelligence Agency and by the army;

(vii) That the Working Group on Enforced or Involuntary Disappearances expressed concern in its report at the failure in Pakistan to hold detainees only in officially recognized places of detention (E/CN.4/1997/34);

(viii) That the Commission on Human Rights, in its resolution 1997/61 demanded that all Governments ensure that the practice of extrajudicial, summary or arbitrary executions be brought to an end and that they take effective action to eliminate the phenomenon, and reiterated the obligation of all Governments to conduct exhaustive and impartial investigations into all suspected cases of extrajudicial, summary or arbitrary executions and to identify and bring to justice those responsible;

(ix) That the Special Rapporteur on extrajudicial, summary or arbitrary executions expressed concern that there had been deaths in custody in Pakistan following detention in life-threatening conditions and that such deaths suggested a pattern of violence against detainees (E/CN.4/1997/60);

(x) That the Human Rights Committee of Pakistan documented 200 deaths in Karachi alone during 1995 as a result of torture in custody;

(xi) That the Special Rapporteur on the question of torture, in discussing the situation in Karachi, reported the widespread killings which allegedly occurred in police custody or in staged "encounters" in which the police or Rangers (the paramilitary

force which replaced the army in 1995), shoot and kill suspects, noting that, although the forces of law and order are under attack and about 300 have been killed since 1992, no police are killed in such "encounters";

(xii) That the Working Group on Arbitrary Detention decided that 6 persons who were Ahmadis were arbitrarily detained for exercising their freedom of conscience and that 125 other persons were similarly detained, accused of blasphemy under section 295C of the Pakistan Penal Code (an offence carrying a mandatory death penalty) as a result of Ordinance XX (upheld by the Pakistan Supreme Court) which prohibits Ahmadis from practising or calling their faith Islam (E/CN.4/1997/4/Add.1 of 29 October 1996, Decision 63);

(xiii) That, following his visit to Pakistan, the Special Rapporteur on religious intolerance commented on the desirability of repealing capital punishment as the penalty for apostasy (E/CN.4/1996/95/Add.1);

(xiv) That the Commission on Human Rights, in paragraph 3a of its resolution 1997/18, recalling General Assembly resolution 26/55 of 25 November 1981, urged States to ensure that their constitutional and legal systems provide adequate and effective guarantees of freedom of religion and belief to all without discrimination;

(xv) That the Commission on Human Rights, in its resolution 1997/16, reaffirmed the obligation of States to ensure that persons belonging to minorities may exercise fully and effectively all human rights and fundamental freedoms without any discrimination and in full equality before the law in accordance with the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities;

(xvi) That the Committee on the Elimination of Racial Discrimination in its concluding observations (CERD/C/304/Add.25, 23 April 1997) expressed concern that the policy of Pakistan to recognize only religious minorities excludes ethnic, linguistic or racial groups living in the country from any specific protection under the International Convention on the Elimination of All Forms of Racial Discrimination that would derive from official recognition of such

groups as minorities, and that discrimination based on race, colour, language, or national or ethnic origin is not prohibited by the Constitution of Pakistan;

(xvii) That in the Vienna Declaration and Programme of Action, adopted in June 1993, the World Conference on Human Rights stated that the human rights of women are inalienable, integral and an indivisible part of human rights and that the eradication of discrimination on grounds of sex is a priority objective,

(xviii) That the Vienna Declaration and Programme of Action affirmed that gender-based violence is incompatible with the dignity and worth of the human person and must be eliminated and that in resolution 1997/44 the Commission on Human Rights called on States to enact and to enforce legislation or amend penal codes where necessary to ensure effective protection against rape, sexual harassment and all other forms of sexual violence against women;

(xix) That in its resolution 1997/43 the Commission on Human Rights urged States to limit the extent of any reservations to the Convention on the Elimination of All Forms of Discrimination against Women and to ensure that no reservations are incompatible with the object and purpose of the Convention, but that Pakistan has entered a reservation that its accession is "subject to the provisions of the Constitution", and that that Constitution implicitly enshrines certain serious discriminatory practices against women;

(xx) That the Commission on Human Rights, in its resolution 1997/20, expressed its grave concern at manifestations of contemporary forms of slavery, inter alia those reported to the Working Group, and, in resolution 1997/78, called upon States to translate into concrete action their commitment to the progressive and effective elimination of all forms of exploitative child labour and, as a matter of priority, to eliminate all extreme forms of child labour, such as forced labour, bonded labour and other forms of slavery and in addition to make primary education free and compulsory;

(xxi) That, in its resolution 1997/42, the Commission on Human Rights called upon States to take all necessary and effective measures in

strict conformity with international law, including human rights standards, to prevent, combat and eliminate terrorism in all its forms and manifestations, wherever and by whomever committed;

(xxii) That it is reliably reported that the Government of Pakistan has recently failed to prevent 1,500 schoolchildren from joining the Taliban forces in Afghanistan, that Government closing its eyes to the activities of religious organizations because it has itself been backing Taliban and other forces waging a holy war in other areas;

(xxiii) That in his report, the Special Rapporteur on extrajudicial, summary or arbitrary executions noted the deaths of children in armed combat or internal strife (E/CN.4/1997/60, para. 56);

2. Welcomes:

(i) The reaffirmation by the President and the new Government of Pakistan of the independence of the judiciary, in the light of interferences with the judiciary by the Government in office until November 1996;

(ii) The creation by the previous Government, in October 1995, of the Ministry of Human Rights and the actualization of the Government's invitation to the Special Rapporteur on the question of torture to visit Pakistan in February and March 1996, although regretting that some of those who had discussions with him were questioned by security forces about those discussions;

(iii) The directions of the Government, headed by Mr. Nawaz Sharif, to the Ministry of Human Rights to take concrete steps to implement his party's human rights policy;

(iv) The Pakistan Law Commission's unanimous recommendation to the current Government that it abandon its intention to establish special courts or tribunals outside the judicial hierarchy in order to have expeditious trials of certain criminal offences, and that the Government deferred proceeding with a bill to amend the Constitution for the purpose of creating such courts;

(v) The Pakistan Law Commission's decision to review in the future certain laws, and, following consideration of these laws, to make

recommendations to the federal Government, inter alia in respect of prison reforms, the blasphemy law, laws relating to children, including child labour, and the Hudood Ordinances;

(vi) The fact that a number of senior police officers are facing charges of abuse of authority and involvement in the criminal violence in Karachi and some other areas, but notes that the killing of Mr. Mir Mutaza Bhutto and Mr. Jatoi, who were unarmed, and were killed with six of their associates, occurred in a police ambush which a judicial committee of inquiry ascribed to "criminal negligence" rather than to murder on instructions of high authorities in the State;

(vii) The appointment of a judicial commission of inquiry into extrajudicial killings in Karachi and the other urban areas of Sindh from 19 October 1993 to 4 November 1996 (the period of Mrs. Bhutto's Administration);

(viii) The announced intention of the Government to eliminate bonded labour (this having been effectively abolished according to a series of earlier communications made to the Working Group on Contemporary Forms of Slavery) and the intention of the Government to achieve universal primary education within five years;

3. Warmly welcomes the renewed talks between Pakistan and India under the Simla Agreements, believing that only peaceful negotiations, involving also full participation by the people of Jammu and Kashmir, can end the gross and systematic violations of human rights which have occurred and are still occurring, and also terrorism;

4. Urges the Government of Pakistan;

(i) To prosecute, in accordance with due process of law and international standards, all those who have perpetrated human rights violations;

(ii) To extend the terms of reference of the Judicial Commission of Inquiry to cover extrajudicial killings from 19 June 1992 in Karachi and other urban areas of Sindh (this being the time when the army launched "Operation Clean-Up" and when such killings began to occur on a large scale) up to the time of the appointment of the Commission of Inquiry on 23 June 1997, there being well

attested reports that such killings continued after the 3 February 1997 election, including systematic killings in May and June 1997;

(iii) To ratify the International Covenant on Civil and Political Rights and its Optional Protocol;

(iv) To ratify the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;

(v) To ensure the passage of legislation abolishing the use of fetters and any forms of restraint which are inhuman or degrading or capable of inflicting torture on the person of the detainee or prisoner;

(vi) To repeal the Hudood Ordinances insofar as they require the imposition of whipping and other inhuman or degrading treatment by way of punishment, and in the interim to take administrative measures to ensure the impossibility of inflicting such a punishment;

(vii) To take measures promptly to ensure equality before the law for women and an end to discrimination against them in judicial proceedings and in all other respects, in particular by amending the Islamic Zina Ordinance of 1979, which makes it difficult for a woman to meet the evidentiary requirements to establish her case;

(viii) To cooperate fully in the follow-up of the Special Rapporteur on religious intolerance in relation to his recommendations made after his visit to Pakistan in 1995;

(ix) To consider amending the Penal Code and Ordinance XX in such a manner that members of the Ahmadi community may fully exercise their right to practise their religion, and to remove the possibility of exploitation of the law by other citizens to intimidate members of religious minorities;

(x) To take active measures, including amendment of legislation and administrative action, to discourage violence by religious extremists and to ensure that the police forces do not act merely as bystanders when persons and property are threatened and destroyed;

(xi) To recognize as minorities communities or groups of persons based on race, colour, language or national or ethnic origins and to

accord them, as such, the protection of the Constitution and the International Convention on the Elimination of All Forms of Racial Discrimination, especially bearing in mind that the Mojahir community of Sindh is an ethno-linguistic minority and has faced severe discriminatory action by the law enforcement authorities of Sindh, in particular the police, paramilitary Rangers and State intelligence agencies;

(xii) To consider ratifying the conventions of the International Labour Organization relating to the elimination of the exploitation of child labour, particularly those concerning the minimum age for employment and especially hazardous work for children, and to eliminate child forced labour, bonded labour and other forms of slavery;

5. Calls upon the Government of Pakistan:

(i) To ensure that capital punishment will not be imposed for apostasy, and in particular to consider amending article 295 C of the Penal Code;

(ii) To ensure that so long as the death penalty is the punishment, charges under section 295 C of the Penal Code are not proceeded with, in particular in respect of Christians, Ahmadis and members of any other minority religious group currently charged under the section;

(iii) To take effective action to ensure that its territory is not used as a base and that persons under its jurisdiction, particularly children, are not recruited to engage in terrorism and violence in other States;

6. Decides to recommend that the Commission on Human Rights consider the situation in Pakistan at its next session.

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COMMISSION ON HUMAN RIGHTS
Sub-Commission on Prevention
of Discrimination and
Protection of Minorities
Forty-ninth session
Agenda item 11 (c) (iii)

REVIEW OF FURTHER DEVELOPMENTS IN FIELDS WITH WHICH THE SUB-COMMISSION HAS BEEN OR MAY BE CONCERNED

REVIEW OF ISSUES NOT PREVIOUSLY THE SUBJECT OF STUDIES BUT WHICH THE SUB-COMMISSION HAD DECIDED TO EXAMINE

INTERNATIONAL PEACE AND SECURITY AS AN ESSENTIAL CONDITION FOR THE ENJOYMENT OF HUMAN RIGHTS, ABOVE ALL THE RIGHT TO LIFE

Mr. Ali Khan, Ms. Daes, Mr. Eide, Ms. Ferero Ucros, Mr. Maxim, Ms. Palley, Mr. Park, Ms. Warzazi, Mr. Weissbrodt and Mr. Yimer: draft resolution

1997/... International peace and security as an essential condition for the enjoyment of human rights, above all the right to life

The Sub-Commission on Prevention of Discrimination and Protection of Minorities,

Guided by the Charter of the United Nations, the Universal Declaration of Human Rights, the International Covenants on Human Rights and the Geneva Conventions of 12 August 1949 and the Additional Protocols thereto,

Recalling General Assembly resolutions 42/99 of 7 December 1987 and 43/111 of 8 December 1988 reaffirming that all people have an inherent right to life,

Recalling also its resolution 1992/39 on arms production and trade and human rights violations,

Recalling further its resolution 1996/16, in which it requested the Secretary-General to submit a report on information gathered on the use of nuclear weapons, chemical weapons, fuel-air bombs, napalm, cluster bombs, biological weaponry and weaponry containing depleted uranium and their consequential and cumulative effects and the danger they represent to life, physical security and other human rights,

Concerned at the use of weapons of mass or indiscriminate destruction or of a nature to cause superfluous injury or unnecessary suffering, both against members of the armed forces and against civilian populations, resulting in death, pain, misery and disability,

Concerned also at repeated reports of the long-term consequences of the use of such weapons upon human life and health,

Concerned further that the physical effects on the environment of testing, storage or disposal of or debris from such weapons, either alone or in combination, and abandoned contaminated equipment constitute a serious danger to life and health,

Convinced that the use of or threat of use of weapons of mass or indiscriminate destruction and, in certain circumstances, the production and sale of such weapons are incompatible with international human rights and/or humanitarian law,

Convinced also that the production, sale, use or threat of use of chemical and biological weapons are incompatible with international law, as well as the promotion and maintenance of international peace and security,

Convinced further that the use on civilian populations of napalm and fuel-air bombs violates the Protocol on Prohibition or Restrictions on the Use of Incendiary Weapons (Protocol III) to the 1980 Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons,

Believing that the production, sale, use or threat of use of nuclear weapons has serious consequences for the promotion and maintenance of international peace and security,

Believing further that continued efforts must be undertaken to sensitize public opinion to the inhuman and indiscriminate effects of all such weapons and to the need for their complete elimination,

Having considered the report of the Secretary-General (E/CN.4/Sub.2/1997/27) and the many serious questions raised therein,

1. Urges all States to be guided in their national policies by the need to curb the testing, the production and the spread of weapons of mass destruction, or with indiscriminate effect, or of a nature to cause superfluous injury or unnecessary suffering;

2. Decides to authorize Ms. Ferero Ucros to prepare, without financial implications, a working paper, in the context of human rights and humanitarian norms, assessing the utility, scope and structure of a study on weapons of mass destruction or with indiscriminate effect, or of a nature to cause superfluous injury or unnecessary suffering.